

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE CATTLE and BEEF ANTITRUST
LITIGATION

Case No. 20-cv-1319 (JRT/HB)

This document relates to:

ALL CASES

**JOINT UPDATE LETTER FOR
CASE MANAGEMENT CONFERENCE ON JUNE 8, 2022**

Pursuant to the Court's Amended Order Regarding Case Management Conferences (ECF No. 507), the parties hereby submit this joint update letter in advance of the Case Management Conference set before Magistrate Judge Bowbeer on June 8, 2022.

Appearances

Appearances are as noted in the Proposed Joint Agenda submitted on June 1, 2022 (ECF No. 563), with two exceptions: Elizabeth Castillo will also appear for the Beef Direct Purchaser Plaintiffs, and Blaine Finley will appear in lieu of Sterling Aldridge for Commercial Indirect Purchasers.

I. Discovery Matters

a. Structured data negotiations update:

The parties continue to meet and confer regarding the production of structured data and are having global and Defendant-specific meet-and-confers proceeding on parallel

tracks. At this time, the parties agree there are no substantive issues ripe for this Court's consideration or that merit previewing for the Court. There is one procedural issue on which the parties seek the Court's input, as set forth below.

Plaintiffs' Position:

Plaintiffs request that the Court set deadlines by which the parties must complete meeting and conferring concerning scope issues related to the production of structured data and submit ripe issues to the Court for assistance in reaching a resolution. Although Plaintiffs acknowledge the parties have made considerable progress in their structured data discussions, they respectfully submit that the imposition of deadlines will expedite those efforts and the identification of any areas of disagreement so as to facilitate Defendants' prompt production of relevant and responsive structured data. Plaintiffs propose that the Court set deadlines of July 7, 2022 for the parties to complete meet-and-confers regarding the scope of Defendants' structured data productions; and July 15, 2022 for Plaintiffs to file any related motions to compel, Defendants' responses to which would be due by July 29, 2022.

Defendants' Position:

Defendants do not believe specific deadlines for completing meet-and-confers over scope issues are necessary or appropriate, as the parties have already made significant progress in meeting and conferring on these issues and continue to actively meet and confer. The parties have held two joint, all-Defendant meet and confers and two

Defendant-specific meetings on scope issues and anticipate scheduling additional Defendant-specific meetings.

Defendants anticipate wrapping up any outstanding negotiations regarding high-level structured data scope questions over approximately the next four to six weeks (in part dependent on the number of follow-up questions posed by Plaintiffs). After meet-and-confers are completed, should Plaintiffs feel it necessary to move to compel, the Local Rules and Magistrate Judge's Practice Pointers should govern the process for initiating any such motion and setting a hearing date.

b. Update on rolling productions:

As noted previously, the parties began rolling productions on April 18, 2022, when *Cattle* Plaintiffs and all Defendants made initial productions. *Cattle* Plaintiffs made follow-on productions on May 2, 2022 and June 6, 2022. *DPP* Plaintiffs made productions on May 4, 10, and 20 2022. Together they have produced 84,516 and 500,966 pages, respectively. *E&G* made a production on June 6 consisting of 447 documents. *Peterson* and *Winn-Dixie* Plaintiffs have not produced any documents, but expect to once search terms are discussed. Cargill Defendants have since made a follow-on production, and Defendants anticipate making additional productions in the relative near-term as the parties continue to make progress on structured data negotiations and await resolution of the search-methodology protocol disputes. All parties recognize that progress on unstructured data productions in particular is affected by the outstanding search-methodology protocol dispute and by ongoing negotiations over RFPs. At this time, the

parties agree there are no substantive issues ripe for this Court's consideration or that merit previewing for the Court. However, Plaintiffs remain concerned that all parties work expeditiously to ensure that the pace of productions does not impact their respective ability to meet deadlines in the forthcoming case schedule.

c. Update on other discovery meet and confers:

The parties have made significant progress in narrowing disputes regarding the over 120 separate requests for production that Plaintiffs have served in six sets of requests. The Defendants and the *Cattle* and *DPP* Plaintiffs are also meeting and conferring in relation to the All Defendants' First Requests to All Plaintiffs. Setting aside requests that seek structured data, the parties continue to negotiate regarding several requests associated with four sets of requests: a) DPP Plaintiffs' First Requests to All Defendants served October 15, 2021; b) All Defendants First Request to All Plaintiffs served November 18, 2021; All Plaintiffs' First Requests to All Defendants served January 11, 2022; and d) *Cattle*, *Consumer*, *Commercial Indirect*, and *Winn-Dixie* Plaintiffs' First Set of Requests to JBS served February 25, 2022 (collectively, the "Outstanding RFPs"), but have no substantive issues with respect to the other previously served RFP sets to be heard by the Court. As with the structured data negotiations, the parties have a similar procedural issue to present to the Court.

Plaintiffs' Position:

Plaintiffs request that the Court set a date certain for the parties to finalize their meet and confers on the Outstanding RFPs, all of which have been pending for many

months. Given Defendants' desire to resolve these requests (or the majority of them) before negotiating search terms and commencing their review, it is important to bring these discussions to a close in the near-term so that substantial document productions can begin. Plaintiffs therefore ask the Court for an order that the parties finalize the meet and confers on the Outstanding RFPs by June 30, 2020, with any motion to be submitted by July 8, 2020. Plaintiffs believe this to be reasonable in circumstances when only a handful of RFPs remain at issue.

Defendants' Position:

Defendants do not believe it is appropriate to set a motion deadline or hearing date at this time regarding any open issues on Plaintiffs' non-structured-data requests for production, as the parties continue to make progress in meeting and conferring on these issues. After meet-and-confers are completed, should Plaintiffs feel it necessary to move to compel, the Local Rules and Magistrate Judge's Practice Pointers should govern the process for initiating any such motion and setting a hearing date.

d. Search methodology protocol disputes:

As noted in the agenda (ECF No. 563), the parties will be prepared to answer any questions the Court may have regarding the Supplemental Joint Letter Brief Regarding Proposed Search Methodology Order for Electronically Stored Information (ECF No. 556).

e. Notice for third-party phone subpoenas:

Per the parties' Rule 26(f) Report (ECF No. 282), a party must provide 3 business

days' notice to the other parties before issuing a third-party subpoena.

Defendants' Position:

Defendants request that for third-party subpoenas seeking phone records from telephone service providers, the Court require 5 business days' notice. Plaintiffs have served six separate "rounds" of phone subpoenas to date, and Defendants anticipate that Plaintiffs will continue to serve numerous additional "rounds." The burden of analyzing Plaintiffs' notices of subpoena and identifying and conferring over deficiencies on a short three-day timeline has proven to be unnecessarily inconvenient, whereas there is no possible prejudice to Plaintiffs in waiting an additional 2 business days to serve these subpoenas.

Plaintiffs' Position:

Three business days is a reasonable amount of time to identify any objections to noticed subpoenas, and the notice period has worked as intended. Defendants generally have proposed only minor changes to Plaintiffs' noticed subpoenas. When Defendants have raised issues with particular phone numbers, Plaintiffs have withheld those numbers from subpoenas beyond the three-day period to allow the parties to engage in good-faith discussions. Adding two extra business days would ensure that each notice period encompassed at least seven calendar days and would make it impossible for Plaintiffs to notice and serve subpoenas in the same week, causing unnecessary delays. The three-business-day period is also consistent with the parties' practice in the *Pork* antitrust litigation.

f. Update on JPML ruling

Although the parties did not set it as an agenda item, the parties wish to update the Court that on June 3, the JPML formed an MDL named *In re: Cattle and Beef Antitrust Litigation* and ordered three direct purchaser actions pending in different jurisdictions to be transferred to this District for coordinated or consolidated pretrial proceedings. A copy of the JPML's transfer order is attached for the Court's convenience as Exhibit A. The parties are aware of one "tagalong" action, and today the JPML entered a conditional transfer order to begin the process of transferring that action to this District.

To the extent the Court has questions about this update, Britt M. Miller (for Defendants) and Elizabeth Castillo (for Plaintiffs) will be prepared to provide further detail.

Dated: June 6, 2022

Respectfully submitted,

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EXHIBIT A

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: DIRECT PURCHASER PLAINTIFF
BEEF ANTITRUST LITIGATION**

MDL No. 3031

TRANSFER ORDER

Before the Panel:* Plaintiffs in the three actions listed on Schedule A move under 28 U.S.C. § 1407 to centralize this litigation in the District of Minnesota. The three actions on the motion are individual direct purchaser actions alleging a price fixing conspiracy among leading American beef producers. Movants seek an MDL consisting of only individual direct purchaser actions. The parties, though, have notified the Panel of six related actions, five of which are pending in the District of Minnesota and are coordinated under the caption *In re: Cattle and Beef Antitrust Litigation* and one which is pending in the Northern District of Illinois.¹ Defendants² and the class plaintiffs in the Minnesota litigation support centralization. Class plaintiffs specifically request that the litigation caption should be changed to *In re: Cattle and Beef Antitrust Litigation* to mirror the name of the coordinated District of Minnesota proceedings.

On the basis of the papers filed and the hearing session held, we find that the actions listed on Schedule A involve common questions of fact, and that centralization in the District of Minnesota will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. These actions share factual questions arising from plaintiffs' allegations that, since at least January 1, 2015, until the present, defendants exploited their market power in this highly concentrated market³ by conspiring to limit the supply, and fix the prices, of

* Certain Panel members who may be members of the putative classes in this litigation have renounced their membership in these classes and participated in this decision.

¹ These and any other related actions are potential tag-along actions. *See* Panel Rules 1.1(h), 7.1, and 7.2.

² Responding defendants include: Cargill Meat Solutions Corporation, Cargill, Inc., JBS Packerland, Inc., JBS S.A., JBS USA Food Company, National Beef Packing Company, Swift Beef Company, Tyson Foods, Inc., and Tyson Fresh Meats, Inc.

³ In addition to market concentration, plaintiffs argue that defendants sit atop the supply and distribution chain that ultimately delivers beef to the market. Their role is to purchase cattle from the nation's farmers and ranchers, slaughter, and pack cattle into beef, and sell beef to purchasers

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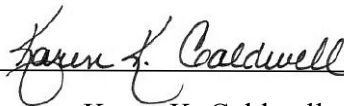
beef sold in the U.S. wholesale market. Defendants allegedly implemented and executed their conspiracy by, *inter alia*, coordinating slaughter volumes and cash cattle purchases to wrongfully drive up the price for beef. Plaintiffs allege that this conduct violated federal antitrust law. Centralization will eliminate duplicative discovery; prevent inconsistent pretrial rulings; and conserve the resources of the parties, their counsel, and the judiciary.

The District of Minnesota is the appropriate transferee district for this litigation. All parties support centralization in this readily accessible district. Judge John R. Tunheim is the logical choice to oversee this litigation, as he has presided over the coordinated *In re: Cattle and Beef Antitrust Litigation* since 2019. The Minnesota litigation includes four coordinated categories of litigation (*i.e.*, the Cattle Antitrust Actions, Direct Purchaser Plaintiff Actions (consolidated in *In re: DPP Beef*), Commercial and Institutional Indirect Purchaser Plaintiff Actions and Consumer Indirect Purchaser Plaintiff Actions) and remains at a relatively early stage of discovery and motion practice. If allowed to proceed separately, as requested by movants, the individual direct purchaser actions likely would involve duplicative discovery and potentially inconsistent pretrial rulings. Given his familiarity with the parties and issues in this litigation, as well as his considerable expertise in the conduct of complex and multidistrict litigation, we are confident that Judge Tunheim will steer this litigation on an efficient and prudent course.

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the District of Minnesota and, with the consent of that court, assigned to the Honorable John R. Tunheim for coordinated or consolidated pretrial proceedings.

IT IS FURTHER ORDERED that MDL No. 3031 is renamed *In re: Cattle and Beef Antitrust Litigation*.

PANEL ON MULTIDISTRICT LITIGATION



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like plaintiffs. This gatekeeping role allegedly has enabled them to collusively control upstream and downstream beef pricing.

**IN RE: DIRECT PURCHASER PLAINTIFF
BEEF ANTITRUST LITIGATION**

MDL No. 3031

SCHEDULE A

District of Connecticut

SUBWAY PROTEIN LITIGATION CORP. v. CARGILL, INC., ET AL., C.A. No. 3:22-00289

Southern District of Florida

CHENEY BROTHERS, INC. v. CARGILL, INC., ET AL., C.A. No. 9:22-80153

Northern District of New York

AMORY INVESTMENTS LLC v. CARGILL, INC., ET AL., C.A. No. 3:22-00222